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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 10 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Review of the Commission's ) MM Docket No. 91-221  
Regulations Governing )  
Television Broadcasting )  
)  
Television Satellite Stations ) MM Docket No. 87-8  
Review of Policy and Rules )  
)  
Review of Communications ) MM Docket No. 94-150  
Regulations Governing Attribution )  
of Broadcast Interests )

TO: The Commission

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**REPLY COMMENTS OF LIN TELEVISION CORPORATION**

LIN Television Corporation ("LIN"), licensee of Stations WAVY-TV, Portsmouth, Virginia; WTNH-TV, New Haven, Connecticut; KXAS-TV, Fort Worth, Texas; KXAN-TV, Austin, Texas; WISH-TV, Indianapolis, Indiana; WANE-TV, Fort Wayne, Indiana; and WAND(TV), Decatur, Illinois,<sup>1/</sup> hereby replies to comments filed in the above-referenced dockets.<sup>2/</sup>

**I. INTRODUCTION**

The record before the Commission clearly supports the liberalization of the Commission's duopoly rules to permit

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<sup>1/</sup> LIN Broadcasting Corporation, a sister corporation, is the licensee of WOOD-TV, Kalamazoo-Grand Rapids, Michigan.

<sup>2/</sup> LIN filed initial comments in the above-referenced dockets as a member of the Local Station Ownership Coalition (the "Coalition") on May 17, 1995.

common ownership of two television stations in a market,<sup>3/</sup> and to permit the continued usage of local marketing agreements ("LMAs").<sup>4/</sup> The few parties to this docket that oppose duopoly reform or LMAs are few in number and unpersuasive in argument.<sup>5/</sup> Quite clearly, the Commission now should (1) modify its rules to permit common ownership of two television

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<sup>3/</sup> See Comments of the Local Station Ownership Coalition, passim; Association of Independent Television Stations, Inc., passim; Malrite Communications Group, Inc., pp. 9-34; New World Communications Group, Inc., pp. 22-26; Louisiana Television Broadcasting Corp., pp. 3-5; Ellis Communications, Inc., p. 6; Media America Corp., pp. 8-10; Cedar Rapids Television Co., pp. 5-9; Clear Channel Television Licenses, Inc.; Westinghouse Broadcasting Co., pp. 28-30 (but limiting to top 25 markets); Jet Broadcasting Co., Inc., pp. 3-4; Dispatch Broadcasting Group, pp. 8-10; National Broadcasting Co., Inc., pp. 29-33; CBS, Inc., p. 57 (supporting duopoly reform but suggesting prior FCC finding on diversity and competition); Capital Cities/ABC, Inc., pp. 24-25 (same, but suggesting case-by-case analysis); Lee Enterprises, Inc., pp. 5-6; Freedom of Expression Foundation, Inc., pp. 16-17.

<sup>4/</sup> See Comments of Local Station Ownership Coalition, pp. 26-34; Malrite Communications Group, pp. 36-51; New World Communications Group, Inc., pp. 28-29; Ellis Communications, Inc., pp. 6-8; Sinclair Broadcast Group, Inc., pp. 5-12; Media America Corp., pp. 10-13; Cedar Rapids Television Co., pp. 12-14; Clear Channel Television Licenses, Inc.; Communications Corp. of America, p. 10; Lee Enterprises, Inc., pp. 7-9; Louisiana Television Broadcasting Corp., p. 12; Jet Broadcasting Co., Inc., p. 10; National Broadcasting Co., Inc., p. 34; Capital Cities/ABC, Inc., pp. 27-28.

<sup>5/</sup> See Comments of Centennial Communications, Inc.; Comments of Post-Newsweek Stations, Inc.; Pulitzer Broadcasting Co.; Press Broadcasting Company, Inc. Certain of these comments clearly are motivated singularly by local competitive considerations. See Attachment A.

stations in a market and (2) expressly sanction the continued use of properly structured LMAs.<sup>2/</sup>

LIN files these reply comments concerning the circumstances under which an LMA should be attributed as an ownership interest of the party providing programming and advertising services under such an agreement. LIN's suggestions are based upon its experience in providing programming and advertising services under LMAs to four independently owned stations, each in markets in which viewpoint diversity, viewer choice and advertising competitiveness have been markedly enhanced by LIN's efforts.<sup>2/</sup>

**II. THE COMMISSION SHOULD TREAT TELEVISION LMAs AND DUOPOLIES REASONABLY AND IN LIGHT OF THE OPERATION OF THE TELEVISION INDUSTRY.**

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**A. Properly Structured LMAs Should Not Be Attributable Ownership Interests.**

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In the context of radio ownership, the Commission has declared that programming a station for more than 15 percent per week pursuant to an LMA shall constitute an attributable ownership interest for purposes of the local

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<sup>6/</sup> Both Houses of Congress have made recent parallel recognitions of the value of duopoly reform and LMAs in fostering the competitiveness of over-the-air broadcasting and maintaining diversity of voice that otherwise could be lost when stations that otherwise would fail are preserved and strengthened by LMAs.

<sup>2/</sup> See Attachment A.

ownership rule.<sup>8/</sup> In doing so, the Commission did not explain either (1) the policy basis for attributing ownership under an LMA even where the LMA has been carefully structured to ensure that the licensee has retained its full statutory responsibilities or (2) why 15 hours per week was chosen as the dispositive threshold, other than to state that doing so would help to prevent "circumvention" of the ownership rules.<sup>9/</sup>

LIN agrees with those parties who fail to see any sound basis for attributing properly structured television LMAs, regardless of the amount of time leased to the programming entity. As commenting parties correctly point out, a station operating under an LMA "remains responsible for fulfillment of its non-delegable licensee duties."<sup>10/</sup> Accordingly, properly structured LMAs provide, at a minimum, that:

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<sup>8/</sup> See Revision of Radio Rules and Policies ("Radio Order"), 7 F.C.C. Rcd. 2755, 2788 (1991), on recon., 7 F.C.C. Rcd. 6387 (1992), further recon., 9 F.C.C. Rcd. 7183 (1994).

<sup>9/</sup> Id. at 2788.

<sup>10/</sup> See, e.g., Comments of The Jet Broadcasting Co., Inc., pp. 10-11. The view of ABC that an "owner-broker occupies the same position as an outright owner of both stations in terms of the effect of such combination on competition and diversity in the relevant viewing, advertising and program acquisition markets," Comments of Capital Cities/ABC, Inc, p. 27, seems to assume that licensees will abdicate their responsibilities as licensees. There is no record evidence whatsoever, in this record or otherwise, to support such an extreme and unreasonable view.

- (1) the licensee of the brokered station continues to have ultimate control over the programming of its station;
- (2) the licensee is empowered to preempt or reject programming which is unsuitable or not in the public interest;
- (3) the licensee continues to be responsible for ensuring a sufficient amount of issue-responsive programming and programming serving the needs of children;
- (4) the licensee continues to be primarily responsible for political broadcasting matters; and
- (5) the licensee continues to be responsible for ascertainment efforts.<sup>11/</sup>

When a licensee continues to exercise this degree of authority over its programming -- authority that is, in LIN's opinion, essential to ensuring that the licensee remains in control of its programming efforts -- it is inappropriate and unrealistic to contend that it has surrendered control of its station to a point where that station must be attributed to another party as if that party owned that station. To the contrary, in the television marketplace, unlike radio, the vast majority of stations have always received the great majority of their programming (and commercials) from other entities - the major television networks. If the Commission were to set a threshold for television at the artificially low level it utilized for radio, it would encompass the nearly 800

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<sup>11/</sup> The Commission's proposal to require television LMAs to be filed, a proposal with which LIN agrees, will permit the Commission's staff to ensure that licensee independence is, in fact, appropriately included in LMAs.

television stations that receive substantially more than 15 percent of their programming from the four major television networks.

The Commission should adopt a rule for attributing LMAs that is consistent with its long-standing recognition that network affiliates continue to be independent stations even if they receive a majority of their programming packaged from a television network.<sup>12/</sup> Such a rule would, in fact, reflect the manner in which stations operate under permissibly structured LMAs.

**B. Same-Market LMAs and Duopoly Ownership Should Not Be "Double Counted" Against A Licensee's National Ownership Audience-Reach Caps.**

The Commission should also clarify that where a licensee has two television stations in a single market, whether through direct licensing or a license and an attributable LMA, the audience reach of those stations for purposes of the national ownership rules is only counted once. In other words, if a licensee has two stations in the Dallas-Ft. Worth DMA, it is credited for purposes of the national ownership audience reach limits, with 1.8 million households.<sup>13/</sup>

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<sup>12/</sup> This can be true even if there are other business relationships between the parties. See BBC License Subsidiary L.P. and SF Green Bay License Subsidiary, Inc., FCC 95-179 (April 27, 1995).

<sup>13/</sup> And, of course, where the stations are UHF stations, the initial audience reach would be discounted by 50%. Where one of the stations is a VHF station, the licensee would be attributed the full DMA population

The national ownership rules are designed to protect diversity and competition on a national level; local diversity and competition are protected by the local ownership rules. The division of the rules is premised on the assumption that the national and local television markets are in fact functionally separate markets, a conclusion which is reinforced by the record in this proceeding. See National Economic Research Associates, Regulating Television Station Acquisitions: An Economic Assessment of the Duopoly Rule, pp. 18-20 (May 17, 1995). Moreover, even if operation of a second station in a market were somehow to enhance a station's national market reach, the combined power of the two stations would in most cases be less than that of many single stations and of many other permissible local media cross-ownerships.<sup>14/</sup>

If local ownership arrangements are found to be in the public interest, then, those arrangements should not be defeated indirectly through inappropriate application of the national ownership rules in the absence of any showing that they uniquely affect the national programming market.

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<sup>14/</sup> For example, Station WTBS-TV, owned, of course, by Turner Broadcasting Systems, is co-owned with cable services that are responsible for the content of multiple channels of programming in Atlanta (Cable News Network, Headline News, Turner Network Television, etc.). Similarly, the NBC television network owns and operates two 24-hour cable networks and has partial ownership interests in 19 other cable networks. Other examples abound.

**C. Properly Structured LMAs Should Have No Impact on a Licensee's Renewal Expectancy.**

LMAs should have no effect on the renewal expectancy of a station provided that it establishes appropriate mechanisms for the licensee of the brokered station to continue to exercise control over its facilities. If an LMA is structured to comply strictly with the Commission's dictates concerning maintenance of licensee ultimate control over the programming, finances and personnel of its station, that LMA has preserved the ability of the licensee to make the essential decisions that comprise the operation of a broadcast station. That licensee, for example, establishes political broadcasting and advertising policies; ascertains community interests; hires and fires employees; compiles issues/programs lists; reviews programming and has the right to preempt or reject LMA-provided broadcast material; ensures that sufficient issue-responsive and children's programming is broadcast; and otherwise operates its station in accordance with the needs of its community of license. Denying that licensee a renewal expectancy would be, in a word, wrong.<sup>15/</sup>

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<sup>15/</sup> Of course, if the LMA fails to contain these key provisions and the licensee has, in fact, abdicated control of its facilities to a broker, that licensee may not be entitled to a renewal expectancy.



D. **LMAs Entered Into Prior to the Adoption of the Further Notice Should Be Grandfathered.**

The Commission should grandfather LMAs that were executed prior to the adoption of the Further Notice on December 15, 1994. These LMAs should be grandfathered for the remainder of the original terms of the LMAs. It would be unfair and contrary to the Commission's long-standing practices to penalize parties that made good faith efforts to comply with the Commission's policies on LMAs prior to the release of the Further Notice.

III. **CONCLUSION**

For the reasons that have been unequivocally established in this docket -- because free, universal over-the-air broadcasting deserves a fair chance to compete on a level playing field with multichannel video sources and to permit diversity and competition to be furthered by LMAs -- the Commission should relax its duopoly rules and continue permitting television LMAs.

Respectfully submitted,

LIN TELEVISION CORPORATION

By: 

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Vice President - New Development  
and General Counsel

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July 10, 1995

## ATTACHMENT A

### LIN Television Local Marketing Agreements

Stations licensed to subsidiaries of LIN Television have agreements to provide programming, marketing and advertising services to stations in Austin, Texas; Dallas, Texas; Hartford, Connecticut; and Norfolk, Virginia. In addition, an affiliated corporation, LIN Broadcasting Corporation, owns Station WOOD-TV, Grand Rapids, Michigan, which has an LMA with a station in Battle Creek, Michigan. These agreements have added substantial diversity and competition to these television markets.

In Austin, Texas, for example, LIN's KXAN-TV helped a former Austin news anchor launch Station KNVA(TV), Channel 36 when that station's construction permit had almost expired. Through this LMA, KXAN and KNVA have:

- Increased Hispanic programming -- The former news anchor is Hispanic and had an interest in bringing Spanish-language public service programming to the market. After placing two Spanish-language programs on the air, the station now is developing a Spanish-language public affairs program.
- Created unique children's programming -- Ten-year-old talk show host Chelsea Hernandez is an Austin celebrity; KNVA provided her with an outlet for a program in which she interviews other kids her age who have developed interesting ideas of their own.
- Provided greater public service -- KNVA repeats KXAN's 6:00 and 10:00 p.m. newscasts an hour later for those who cannot see them at the earlier hour. The station also broadcasts its own "Weather Minute" program, which provides 30 seconds of up-to-the-minute weather forecasting and 30 seconds of live Doppler radar images.
- Created an outlet for a competitive new network -- With four other full-power stations in Austin, there was no station available to carry the new Warner Brothers Network (or, for that matter, many highly demanded syndicated programs). KNVA is bringing more viewer choice to Austin viewers and more competition.

In the Dallas/Fort Worth, Texas market, LIN's Station KXAS-TV, Fort Worth, has entered into an LMA with Station KXTX(TV), Channel 39. Before its LMA with KXAS, KXTX was a failing business, a struggling independent station

competing with 15 other stations, including major independent group owners Paramount and Fox. It had few real news programs, few viewers, large debts and little viable future. After entering into an LMA with KXAS, KXTX was able to regain its financial footing and provide competitive programming. The station now airs KXAS's 6:00 and 10:00 p.m. newscasts at 7:00 p.m. and midnight -- the first newscasts at those times in the market. KXTX's LMA allowed it to provide seven hours of local election coverage -- the first wall-to-wall local election coverage in the history of the market.

In Grand Rapids and Battle Creek, Station WOTV(TV) (then Station WUHQ-TV) was a struggling ABC affiliate squeezed by competition from an overlapping ABC affiliate, the entrance of new stations into the market, and increased programming costs. Even after eliminating its local news programming entirely and laying off 21 news staffers, the station continued to lose more than \$1 million per year. Without drastic action, the station would have gone dark. In 1991, WOTV entered into an LMA with Station WOOD-TV in Grand Rapids. Today, WOTV is once again producing local news programming at 6:00 and 10:00 p.m. in Battle Creek and is once again profitable. Now that it again is a healthy station, WOTV has become an active force in community affairs, sponsoring many civic activities and events in Battle Creek and Kalamazoo, Michigan.

In Norfolk, Virginia, LIN's Station WAVY-TV provides programming, marketing and advertising services to Station WVBTV(TV), Virginia Beach, Virginia. LIN's LMA with Station WVBTV(TV) has helped it become a more competitive force in the community. Prior to the LMA, WVBTV was a struggling home-shopping affiliate in a seven-station market. Now, WVBTV is able to program news, sports, children's television, and provide an outlet for a new network service to Virginia. This result is unquestionably in the public interest.

Centennial Communications, Inc. ("Centennial"), licensee of Station WGNT(TV), Portsmouth-Norfolk, Virginia, claims to be at a competitive disadvantage because LIN's Station WAVY-TV operates an LMA with Station WVBTV(TV), Virginia Beach, Virginia. Centennial's claims have no basis in fact. Centennial's claim that it is disadvantaged because it is a UHF independent is not borne out by the facts. The Norfolk market has 72 percent cable penetration, largely ameliorating any UHF technical disadvantage. And Centennial's station has done well in the marketplace -- WGNT had the highest growth rate in the entire market in terms of dollars. WGNT also has been highly successful in attracting successful programming, including Ricki Lake and other popular programs.

Centennial claims it is against the public interest for WAVY-TV's 6:00 p.m. news to be rebroadcast on WVBTV at 7:30 p.m. Quite the contrary is true. The rebroadcast of news programming on WVBTV permits a substantial segment of the audience that otherwise could not view earlier local newscasts to be informed about their community. There is, moreover, no lack of voices in the Norfolk- Virginia Beach-Portsmouth television market, as Centennial alleges. In addition to seven full-power television stations, there are several low-power television stations and highly successful cable systems. Satellite programming also is available. Finally, there is an element of sour grapes to Centennial's current complaint. In 1992 and 1994, Centennial and LIN held discussions about entering into an LMA, and Centennial later attempted to negotiate an LMA with local Station WJCB(TV).

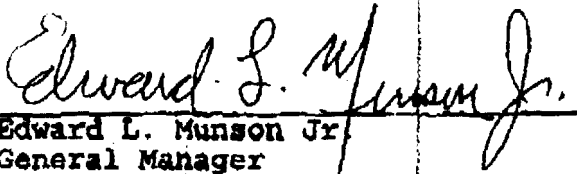
And, in Hartford-New Haven, an LMA with LIN's station, WTNH(TV), has enabled WTVU(TV), Channel 59, to initiate operations as a WB Network affiliate after its construction permit had been pending for more than 40 years.

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Declaration of Edward L. Munson, Jr.


I, Edward L. Munson Jr., general manager of Station WAVY-TV, Portsmouth, Virginia, hereby declare under penalty of perjury of the laws of the United States, that I have personal knowledge of the facts stated in the foregoing Attachment A above concerning the Norfolk-Virginia Beach television marketplace and that those facts are true to the best of my knowledge and belief.

Signed this 10<sup>th</sup> day of July, 1994, 1995

  
Edward L. Munson Jr.  
General Manager  
Station WAVY-TV

CERTIFICATE OF SERVICE

I, Gregory M. Schmidt, hereby certify that true and correct copies of the foregoing pleading have been sent by United States mail, postage prepaid and correctly addressed, to the following on this 10th day of July, 1995.

  
\_\_\_\_\_  
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